STATE OF MICHIGAN

COURT OF APPEALS

STEPHANIE ALLEN,

Plaintiff-Appellant,

v

ESTATE OF DR. PAUL JEROME TREUSCH and WATERFORD FAMILY PHYSICIANS, P.C.,

Defendants-Appellees.

UNPUBLISHED
April 20, 2006

No. 259737
Oakland Circuit Court
LC No. 2003-047614-NH

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this medical malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

The limitations period for a malpractice claim is two years from the time the claim accrues. MCL 600.5805(1) and (6). The law formerly provided that a malpractice claim accrued at the time the defendant discontinued "treating or otherwise serving" the plaintiff in a professional capacity as to the matters out of which the claim for malpractice arose. MCL 600.5838 as enacted in 1975 PA 142, later amended by 1986 PA 178. Thus, "the cessation of an ongoing physician-patient relationship mark[ed] the point at which the period of limitation beg[an] to run." *Stapleton v Wyandotte*, 177 Mich App 339, 343; 441 NW2d 90 (1989). However, § 5838 was amended in 1986 and made subject to the newly-added § 5838a. 1986 PA 178. Pursuant to that section, a medical malpractice claim accrues at the time of the act or omission that gave rise to the claim "regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1). Each new, distinct negligent act or omission may give rise to a new accrual date, but a doctor's ongoing adherence to an original misdiagnosis and treatment determination does not. *McKiney v Clayman*, 237 Mich App 198, 204-205 n 4, 207; 602 NW2d 612 (1999). A medical malpractice claim may be filed within the two-year period under MCL 600.5805(6), in accordance with MCL 600.5851 to 600.5856, or within six

months after the plaintiff discovers or should have discovered the claim, whichever is later. MCL 600.5838a(2).

Plaintiff was seen on numerous occasions between August 1989 and October 2001, mainly by Dr. Treusch. In these visits, plaintiff was never diagnosed with lupus or Wegener's granulomatosis. According to plaintiff's notice of intent to sue, it was not plaintiff's presenting symptoms alone that should have alerted Dr. Treusch that plaintiff might have these conditions, but rather plaintiff's symptoms in conjunction with positive ANA tests. Those tests results were obtained in December 1992, January 1994, November 1997, and January 1998. Each time Treusch reviewed and allegedly misinterpreted the ANA test results as not indicating a possible autoimmune disorder, he arguably committed a new, distinct act of negligence giving rise to a new accrual date. There is nothing in defendants' records to suggest that any other ANA tests were performed after January 1998. Thereafter, Treusch and others simply adhered to the original misdiagnosis (that plaintiff did not have an autoimmune disorder) and treatment determination (that plaintiff did not require treatment, testing, or a referral to a rheumatologist for such a disorder).

Plaintiff was seen in February, March, and October 2001, a period of time within the limitations period, and she presented with various symptoms. Plaintiff focuses on these office visits and argues that they constitute new instances of medical malpractice in which her condition was not diagnosed. As part of the argument, plaintiff reaches back, placing reliance on the earlier ANA tests and the previously presented symptoms, along with symptoms presented in the three 2001 visits. The flaw in plaintiff's argument is that the symptoms that were presented in the 2001 office visits were the same symptoms observed and considered from the beginning of her treatment with defendants, dating back to 1989. Therefore, the symptoms and the ANA test results had been before Treusch in the past, and the symptoms related to the 2001 office visits were nothing new; lupus and Wegener's granulomatosis remained undiagnosed. Accordingly, there was ongoing adherence to an original misdiagnosis and treatment determination. Thus, plaintiff's cause of action arguably accrued in January 1998, at the latest, and the limitations period expired in January 2000.

We find unpersuasive plaintiff's reliance on a "continuing-wrong or continuing-treatment rule" for extending the limitations period through the last date of treatment. This Court has already rejected such a rule as an attempt to "effectively resurrect" the last treatment rule that was abolished in 1986. *McKiney, supra* at 208. We also decline to apply the "continuing-violations" doctrine, which has recently been overruled as being inconsistent with the language of the statute of limitations. *Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 266; 696 NW2d 646 (2005).

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray